

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

EDDIE M. TRUE,

Appellant,

v.

OLYMPIC AIR POLLUTION CONTROL
AUTHORITY,

Respondent.

PCHB No. 91-43

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of Olympic Air Pollution Control Authority's (OAPCA) Civil Penalty Assessment of fifty dollars (\$50), with twenty-five dollars (\$25) suspended for the alleged violation of Section 9.05(d)(3) of OAPCA's Regulation I (particulate matter), was heard before the Pollution Control Hearings Board in Lacey, Washington, on June 27, 1991. Board Members hearing the appeal were Harold S. Zimmerman and Annette S. McGee.

Appellant Eddie M. True, represented himself. Respondent appeared by its attorney, Fred D. Gentry. Court Reporter Louise M. Becker of Gene Barker & Associates recorded the proceedings.

Witnesses were sworn and testified. Exhibits were entered and examined. From the testimony heard and exhibits examined, the Pollution Control Hearings Board makes these:

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 91-43

1 FINDINGS OF FACT

2 I

3 Respondent, pursuant to RCW 43.21B.260 has filed with the Board a
4 certified copy of its Regulation I. We take official notice of the
5 Regulation and amendments.

6 II

7 Appellant, Eddie M. True, 18324 Cook Road, SE, Yelm, WA, is a
8 land surveyor and previous owner of a portion of a gravel road called
9 Thirty-Second Avenue NE, located in Section 3, Township 18 N., Range 1
10 West, W.M. in Thurston County.

11 Thirty-Second Avenue NE intersects with Marvin Road on the east
12 and Eagle Drive on the west. It is hard surfaced, where it intersects
13 with Marvin Road, going west for about two tenths of a mile. This
14 encompasses the two accesses into Alpine Mobile Homes Estates which
15 has about fifty (50) spaces. The mobile home park is located at 7300
16 Thirty-Second Avenue, NE, on the north side of the road. A few feet
17 past the West Entrance, the road becomes gravel for about another two
18 tenths of a mile or approximately eleven hundred fifty (1150) feet,
19 where it makes a right angle corner on to Eagle Drive. The gravel
20 section of the road has many potholes in it.

21 III

22 Mr. True obtained ownership of property in the area in question
23 in March, 1984. This included a portion of the road and adjacent
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1 land. He sold it to Duane Krieger in April, 1991. The formal
2 complaint and alleged violation took place in August, 1990.

3 IV

4 Located on Eagle Drive to the Northwest is a residential
5 community and church. These residents use Thirty-Second Avenue NE to
6 enter Marvin Road, which accesses Interstate Highway 5.

7 V

8 On August 15, 1990, OAPCA received a formal written complaint
9 from Earl Bach, 7300 Thirty-Second Avenue NE, Alpine Court, Space 31,
10 Olympia, that "whenever cars or trucks travel over the graveled road
11 at any speed, the dust flys, causing dust in eyes, dust in nose, and
12 dust over trees, homes, cars, etc."

13 VI

14 OAPCA Inspector Gregory Connor had received other verbal
15 complaints from residents in Alpine Court, so he visited the site on
16 August 16, 1990. He observed no dust build up on plants and
17 vegetation on Lot Number 31, but did observe dust traveling past the
18 west entrance of the park, caused by fast moving cars.

19 He then proceeded west on Thirty-Second NE, and turned north on
20 Eagle Drive to observe what portion of the untreated roadway was
21 causing the problem and to try to determine traffic patterns.

22 Connor investigated the records at the Thurston County
23 Courthouse, and determined that Eddie True owned the roadway in
24 question.

VII

A Notice of Civil Penalty Assessment dated January 1, 1991, was sent to Eddie M. True, 18324 Cook Road, SE, Yelm, WA. The notice cited violation of OAPCA's Section 9.05(d)(3), Regulation I, regarding fugitive dust from untreated roadway, and it assessed a penalty of fifty dollars (\$50) with twenty-five (\$25) suspended.

VIII

The wind blows from the west and southwest most of the time, thereby causing dust to travel in the direction of the Mobile Home Park, when cars travel the untreated roadway.

Residents in the Park located about seventy-five (75) feet north of Thirty-Second Avenue NE, have complained of hay fever and asthma conditions, agitated by the dust problem.

IX

Mr. True, a land surveyor, surveyed the area and determined that Thurston County owns a portion of the graveled Thirty-Second Avenue NE, as well as the hard-surfaced portion of the same road.

He contends that at the time of the citation, the portion of the road in his ownership was not causing most of the dust problem, because Thurston County owns the first five-hundred (500) feet west of the hard surface area.

X

From the exhibits admitted and testimony given, it appears that

1 Thurston County is also responsible for causing fugitive
2 particulates. They were not cited. However, some of the fugitive
3 particulate possibly did come from the graveled portion of
4 Thirty-Second Avneue owned by Eddie True.

5 XI

6 Any Conclusion of Law deemed to be a Finding of Fact is hereby
7 adopted as such. From these Findings of Fact, the Board makes these

8 CONCLUSIONS OF LAW

9 I

10 The Board has jurisdiction over these parties and these matters.
11 Chapter 70.94 RCW and 43.21B RCW.

12 II

13 Section 9.05 of OAPCA's Regulation I provides, in pertinent part:

14 *(d) Fugitive particulate material. Reasonable and/or*
15 *appropriate precautions shall be taken to prevent*
16 *fugitive particulate material from becoming airborne;*

17 (1) . . .

18 (2) . . .

19 (3) From an untreated open area.

20 Particulate matter is defined as "any liquid, other than water,
21 or any solid which is so finely divided as to be capable of becoming
22 windblown or being suspended in air or other gas or vapor", Section
23 1.07 of OAPCA's Regulation I.

24 Fugitive particulate material is that which is generated
25 incidental to an operation, process or procedure, and is emitted into
26

1 the open air from points other than an an opening designed for
2 emissions such as a stack. Section 9.05(d) of OAPCA's Regulation I.

3 III

4 We conclude that True owned a portion of the gravel streets on
5 Thirty-Second Avenue, NE, from 1984 to April, 1991, which was during
6 the time of the alleged violation. We further conclude that by
7 failing to apply some form of control for suppression of dust on the
8 portion that he owned, appellant failed to take the reasonable
9 precautions called for, and thus violated Section 9.05(d)(3) of
10 OAPCA's Regulation I, by allowing some dust to be created from
11 traveling vehicles.

12 IV

13 Any Finding of Fact which is deemed a Conclusion of Law is hereby
14 adopted as such.

15 From these Conclusions of Law, the Board enters the following:
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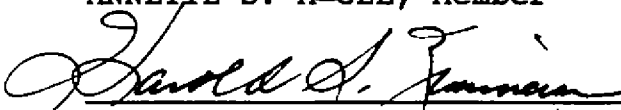
ORDER

The Notice of Civil Penalty is AFFIRMED. The fifty dollar (\$50) penalty is AFFIRMED, with twenty five dollars (\$25) suspended, provided that Eddie True does not violate air pollution laws related to fugitive matters for one year.

Done this 24th day of July, 1991.

POLLUTION CONTROL HEARINGS BOARD


ANNETTE S. MCGEE, Member


HAROLD S. ZIMMERMAN, Chairman

0189B